

4/26/2005 4:51 PM FROM: VE LLP VENARDI ELAM LLP TO: +1 (213) 243-4199 PAGE: 006 OF 008  
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006/008

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 JAMES S. BLACKBURN (State Bar No. 169134)  
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Attorneys for Defendant Joseph P. Urso

UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 OAKLAND DIVISION

Brian Gotta, Bill Edwards, Larry Weiss, )  
 Linda Mendez, Christina Perry, Roger Baker, )  
 John Thorp, Chuck Montagnon, Tony )  
 Gonsalves, Stephen Barron, Ronald and )  
 Patricia Battema, Joseph Ceraolo, Donna )  
 Burgtorf, Frank Del Monte, Tom DeSantis, )  
 Jerry Distler, Larry Dunn Jr., Kim Dyer, Ken )  
 Godby, Gary Griffin, Joe Hachmeister, Bill )  
 Harnsberger, George and Patsy Holland, )  
 Leonard Horsley Jr., Roy Edward Huff, )  
 Avery Hull, Steve Larson, John Marcella, )  
 Joleen Matthews, Eleanor Noel McCarthy, )  
 Jerry Murray, James Ruppert, Edward Santo, )  
 Thomas Scholle, Leo Sheridan, Albert )  
 Stephenson, Bill Stovall, Anita Thompson, )  
 Leveda Thompson, Ann Thomson, John )  
 Walch, Daphne White, Dennis Wilkins, )  
 Thomas Willis, Plaintiff Does A, B and C. )

Plaintiffs,

v.

Joseph P. Urso, an individual; Todd Follmer, )  
 an individual, Actiebolaget Electrolux A.B., a )  
 foreign corporation, Charles Schwabb & Co., )  
 Inc.; Aerus Living Corporation, a corporation; )  
 Azure Corporation, a corporation; V'En, a )  
 corporation, Defendant Does 1 through 10, )  
 inclusive, )

Defendants.

Case No. C 05-00374 SBA

**STIPULATION OF THE PARTIES TO  
 PERMIT DEFENDANT JOSEPH P.  
 URSO TO FILE FIRST AMENDED  
 ANSWER AND PROPOSED FIRST  
 AMENDED ANSWER; [PROPOSED]  
 ORDER THEREON**

Honorable Sandra B. Armstrong

Stipulation Of The Parties To Permit Defendant Joseph P. Urso To  
 File A First Amended Answer And Proposed First Amended Answer  
 Case No. C 05-00374 SBA

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1           Whereas on February 1, 2005 Defendant Joseph P. Urso ("Urso") filed his Answer to  
2 Plaintiffs' First Amended Complaint;

3           Whereas Urso now wishes to file the First Amended Answer ("FAA") attached hereto as  
4 Exhibit A to add the additional defense of Release, Settlement and Discharge as to Plaintiff  
5 Eleanor N. McCarthy;

6           Whereas the additional defense is set forth as the Thirty Third Defense in Urso's First  
7 Amended Answer and the amended answer does not contain any other changes or amendments;

8           Whereas Plaintiffs, without conceding the merits of any aspect of the First Amended

9 ///

10 ///

11 ///

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008/008

1 Answer and without waiving their objections to subject matter jurisdiction set forth in their pending  
2 Motion for Remand, agree that that the First Amended Answer may be filed;

3 IT IS HEREBY STIPULATED by Plaintiffs and Urso, by and through their respective  
4 attorneys of record, that Urso may file the attached First Amended Answer.

5 IT IS SO STIPULATED.

6 Dated: April 26, 2005

VENARDI • ELAM LLP

7 By: H. Larry Elam III  
8 H. Larry Elam III  
9 Attorneys for Plaintiffs

10 Dated: April 27, 2005

ARNOLD &amp; PORTER LLP

11 By: Regina A. Stagg  
12 Regina A. Stagg  
13 Attorneys for Defendant  
14 Joseph P. Urso

15 **ORDER**

16 IT IS HEREBY ORDERED THAT Defendant Joseph P. Urso shall be permitted to file his  
17 First Amended Answer to Plaintiffs' First Amended Complaint. The First Amended Answer is  
18 hereby deemed filed as of the date on which the foregoing Joint Stipulation and Proposed First  
19 Amended Answer were submitted to this Court.

20 IT IS SO ORDERED.

21  
22  
23 DATED: May 5, 2005

/s/ Sandra Brown Armstrong  
Sandra B. Armstrong  
United States District Judge

EXHIBIT A

REGINA A. STAGG (State Bar No. 103953)  
 JAMES S. BLACKBURN (State Bar No. 169134)  
 TRUC-LINH N. NGUYEN (State Bar No. 291656)  
 ERIKA K. WOODS (State Bar No. 228926)  
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Attorneys for Defendant Joseph P. Urso

**UNITED STATES DISTRICT COURT**  
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 Monte; Tom DeSantis; Jerry Distler; Larry )  
 Dunn Jr.; Kim Dyer; Ken Godby; Gary )  
 Griffin; Joe Hachmeister; Bill Harnsberger; )  
 George and Patsy Holland; Leonard Horsley )  
 Jr.; Roy Edward Huff; Avery Hull; Steve )  
 Larson; John Marcella; Joleen Matthews; )  
 Eleanor Noel McCarthy; Jerry Murray; James )  
 Ruppert; Edward Santo; Thomas Scholle; Leo )  
 Sheridan; Albert Stephenson; Bill Stovall; )  
 Anita Thomson; Leveda Thompson; Ann )  
 Thompson; John Walch; Daphne White; )  
 Dennis Wilkins; Thomas Willis; Plaintiff )  
 Does A, B, and C. )

Plaintiffs,

v.

JOSEPH P. URSO, an individual; TODD )  
 FOLLMER, an individual, ACTIEBOLAGET )  
 ELECTROLUX A.B., a foreign corporation, )  
 CHARLES SCHWABB & CO., INC., )  
 AERUS LIVING CORPORATION, a )  
 corporation, AZURE CORPORATION, a )  
 corporation, V'EN, a corporation, Defendant )  
 DOES 1 through 10, inclusive, )

Defendants.

Case No. C 05-00374 SBA

FIRST AMENDED ANSWER OF  
 DEFENDANT JOSEPH P. URSO TO FIRST  
 AMENDED COMPLAINT

Honorable Sandra B. Armstrong

1 Defendant Joseph P. Urso ("Urso") for himself and no other defendant, answers the first  
 2 amended complaint (the "FAC") filed herein by plaintiffs. Urso was not served with the original  
 3 complaint in this action. The FAC was the first pleading he received.<sup>1</sup> Urso admits, denies and  
 4 alleges as follows:

5 1. Answering paragraph 1 of the FAC, Urso admits the allegations contained in that  
 6 paragraph.

7 2. Answering paragraph 2 of the FAC, Urso admits that he is an individual residing in  
 8 Texas. Urso further admits that he regularly makes telephone calls to California and that he has  
 9 made telephone calls to a girlfriend in California. Urso states that the fourth sentence of paragraph  
 10 2 is so vague, ambiguous and unintelligible, that he is without knowledge or information sufficient  
 11 to form a belief as to the truth of the allegations in that sentence and, on that basis, denies such  
 12 allegations. Except as expressly admitted and alleged herein, Urso denies each and every allegation  
 13 contained in paragraph 2 of the FAC.

14 3. Answering paragraph 3 of the FAC, Urso admits that Todd Follmer is an individual  
 15 who resides in California. Except as expressly admitted and alleged herein, Urso denies each and  
 16 every allegation contained in paragraph 3 of the FAC.

17 4. Answering paragraph 4 of the FAC, Urso admits that Aktiebolaget Electrolux A.B.<sup>2</sup>  
 18 ("Aktiebolaget Electrolux"), is a corporation headquartered in Sweden. Urso is without knowledge  
 19 or information sufficient to form a belief as to the truth of the allegations that Aktiebolaget  
 20 Electrolux does business throughout California, including in San Francisco, California, and, on that  
 21 basis, denies such allegations. Except as expressly admitted and alleged herein, Urso denies each  
 22 and every allegation contained in paragraph 4 of the FAC.

23 5. Answering paragraph 5 of the FAC, Urso responds that he is without knowledge or  
 24 information sufficient to form a belief as to the truth of the allegations that Charles Schwab & Co.,

25  
 26 <sup>1</sup> As described in the Additional and Affirmative Defenses below, the attempted service on Urso  
 was defective.

27 <sup>2</sup> The name of this company is misspelled in the FAC.

1 Inc. ("Schwab") is a corporation that does business throughout California and, on that basis, denies  
2 such allegations. Except as expressly alleged herein, Urso denies each and every allegation  
3 contained in paragraph 5 of the FAC.

4 6. Answering paragraph 6 of the FAC, Urso responds that he is without knowledge or  
5 information sufficient to form a belief as to the truth of the allegations contained in the first three  
6 sentences of paragraph 6 and, on that basis, denies such allegations. Except as expressly alleged  
7 herein, Urso denies each and every allegation contained in paragraph 6 of the FAC.

8 7. Answering paragraph 7 of the FAC, Urso responds that he is without knowledge or  
9 information sufficient to form a belief as to the truth of the allegations contained in paragraph 7 and,  
10 on that basis, denies such allegations.

11 8. Answering paragraph 8 of the FAC, Urso denies each and every allegation contained  
12 therein.

13 9. Answering paragraph 9 of the FAC, Urso denies each and every allegation contained  
14 therein.

15 10. Answering paragraph 10 of the FAC, Urso incorporates by this reference, as if fully  
16 set forth herein, the responses contained in paragraphs 1 through 9 above.

17 11. Answering paragraph 11 of the FAC, Urso denies each and every allegation  
18 contained therein.

19 12. Answering paragraph 12 of the FAC, Urso denies each and every allegation  
20 contained therein.

21 13. Answering paragraph 13 of the FAC, Urso responds that he is without knowledge or  
22 information sufficient to form a belief as to the truth of the allegations regarding the alleged actions  
23 and knowledge of Aktiebolaget Electrolux and, on that basis, denies such allegations. Urso further  
24 responds that the last full sentence of paragraph 13 and the sentence fragment at the end of  
25 paragraph 13 are so vague, ambiguous and unintelligible that Urso is without knowledge or  
26 information sufficient to form a belief as to the truth of those allegations and, on that basis, denies  
27  
28



1 such allegations. Except as expressly alleged herein, Urso denies each and every allegation  
2 contained in paragraph 13 of the FAC.

3 14. Answering paragraph 14 of the FAC, Urso responds that he is without knowledge or  
4 information sufficient to form a belief as to the truth of the allegations regarding the alleged actions  
5 and knowledge of Aktiebolaget Electrolux and, on that basis, denies such allegations. Except as  
6 expressly alleged herein, Urso denies each and every allegation contained in paragraph 14 of the  
7 FAC.

8 15. Answering paragraph 15 of the FAC, Urso responds that he is without knowledge or  
9 information sufficient to form a belief as to the truth of the allegations regarding the alleged actions  
10 of Schwab or Follmer and, on that basis, denies such allegations. Except as expressly alleged  
11 herein, Urso denies each and every allegation contained in paragraph 15 of the FAC.

12 16. Answering paragraph 16 of the FAC, Urso responds that he is without knowledge or  
13 information sufficient to form a belief as to the truth of the allegations regarding the alleged actions  
14 of Schwab or Follmer and, on that basis, denies such allegations. Except as expressly alleged  
15 herein, Urso denies each and every allegation contained in paragraph 16 of the FAC.

16 17. Answering paragraph 17 of the FAC, Urso denies each and every allegation  
17 contained therein.

18 18. Answering paragraph 18 of the FAC, Urso denies each and every allegation  
19 contained therein.

20 19. Answering paragraph 19 of the FAC, Urso responds that he is without knowledge or  
21 information sufficient to form a belief as to the truth of the allegations regarding the alleged actions  
22 of Aktiebolaget Electrolux. Except as expressly alleged herein, Urso denies each and every  
23 allegation contained in paragraph 19 of the FAC.

24 20. Answering paragraph 20 of the FAC, Urso responds that he is without knowledge or  
25 information sufficient to form a belief as to the truth of the allegations regarding the alleged actions  
26 and knowledge of Schwab and, on that basis, denies such allegations. Urso further responds that the  
27 allegations of the last sentence of paragraph 20 are so vague, ambiguous and unintelligible that Urso  
28



1 is without knowledge or information sufficient to form a belief as to the truth of those allegations  
2 and, on that basis, denies such allegations. Except as expressly alleged herein, Urso denies each and  
3 every allegation contained in paragraph 20 of the FAC.

4 21. Answering paragraph 21 of the FAC, Urso denies each and every allegation  
5 contained therein.

6 22. Answering paragraph 22 of the FAC, Urso denies each and every allegation  
7 contained therein.

8 23. Answering paragraph 23 of the FAC, Urso denies each and every allegation  
9 contained therein.

10 24. Answering paragraph 24 of the FAC, Urso denies each and every allegation  
11 contained therein.

12 25. Answering paragraph 25 of the FAC, Urso denies each and every allegation  
13 contained therein.

14 26. Answering paragraph 26 of the FAC, Urso denies each and every allegation  
15 contained therein.

16 27. Answering paragraph 27 of the FAC, Urso denies each and every allegation  
17 contained therein.

18 28. Answering paragraph 28 of the FAC, Urso states that, to the extent the allegations in  
19 this paragraph constitute legal conclusions, they do not require a response. Except as expressly  
20 alleged herein, Urso denies each and every allegation contained in paragraph 28 of the FAC.

21 29. Answering paragraph 29 of the FAC, Urso denies each and every allegation  
22 contained therein. Without limiting the generality of the foregoing, Urso specifically denies that any  
23 of the plaintiffs are entitled to any remedy or any sum from Urso and also denies that any of the  
24 plaintiffs have tendered or have the ability to tender securities as alleged in that paragraph.

25 30. Answering paragraph 30 of the FAC, Urso denies each and every allegation  
26 contained therein.

1           31.     Answering paragraph 31 of the FAC, Urso denies each and every allegation  
2 contained therein. Without limiting the generality of the foregoing, Urso specifically denies that any  
3 of the plaintiffs have been damaged by him in any manner or amount whatsoever.

4           32.     Answering paragraph 32 of the FAC, Urso denies each and every allegation  
5 contained therein.

6           33.     Answering paragraph 33 of the FAC, Urso incorporates by this reference, as if fully  
7 set forth herein, the responses contained in paragraphs 1 through 32 above.

8           34.     Answering paragraph 34 of the FAC, Urso denies each and every allegation  
9 contained therein.

10          35.     Answering paragraph 35 of the FAC, Urso denies each and every allegation  
11 contained therein.

12          36.     Answering paragraph 36 of the FAC, Urso responds that he is without knowledge or  
13 information sufficient to form a belief as to the truth of the allegations contained in paragraph 36  
14 and, on that basis, denies such allegations.

15          37.     Answering paragraph 37 of the FAC, Urso responds that he is without knowledge or  
16 information sufficient to form a belief as to the truth of the allegations contained in paragraph 37  
17 and, on that basis, denies such allegations.

18          38.     Answering paragraph 38 of the FAC, Urso responds that the allegations contained in  
19 paragraph 38 are so vague, ambiguous, and unintelligible that Urso is without knowledge or  
20 information sufficient to form a belief as to the truth of those allegations and, on that basis, denies  
21 such allegations. Without limiting the generality of the foregoing, Urso specifically denies that he  
22 concealed or failed to disclose any material facts or made any false statements to any plaintiff or  
23 ordered others to make false statements to any plaintiff.

24          39.     Answering paragraph 39 of the FAC, Urso responds that he is without knowledge or  
25 information sufficient to form a belief as to the truth of the allegations contained in paragraph 39  
26 and, on that basis, denies such allegations.

1           40.     Answering paragraph 40 of the FAC, Urso responds that he is without knowledge or  
2 information sufficient to form a belief as to the truth of the allegations contained in paragraph 40  
3 and, on that basis, denies such allegations.

4           41.     Answering paragraph 41 of the FAC, Urso denies each and every allegation  
5 contained therein.

6           42.     Answering paragraph 42 of the FAC, Urso denies each and every allegation  
7 contained therein.

8           43.     Answering paragraph 43 of the FAC, Urso responds that he is without knowledge or  
9 information sufficient to form a belief as to the truth of the allegations regarding the alleged actions  
10 and knowledge of Aktiebolaget Electrolux and, on that basis, denies such allegations. Urso further  
11 responds that the allegations of the second sentence of paragraph 43 are so vague as to time that  
12 Urso is without knowledge or information sufficient to form a belief as to the truth of those  
13 allegations and, on that basis, denies the allegations. Except as expressly alleged herein, Urso  
14 denies each and every allegation contained in paragraph 43 of the FAC.

15           44.     Answering paragraph 44 of the FAC, Urso responds that he is without knowledge or  
16 information sufficient to form a belief as to the truth of the allegations regarding the actions and  
17 knowledge of Schwab and, on that basis, denies such allegations. Except as otherwise expressly  
18 alleged herein, Urso denies each and every allegation contained in paragraph 44 of the FAC.

19           45.     Answering paragraph 45 of the FAC, Urso denies each and every allegation  
20 contained therein.

21           46.     Answering paragraph 46 of the FAC, Urso denies each and every allegation  
22 contained therein.

23           47.     Answering paragraph 47 of the FAC, Urso denies each and every allegation  
24 contained therein.

25           48.     Answering paragraph 48 of the FAC, Urso denies each and every allegation  
26 contained therein.

1           49.     Answering paragraph 49 of the FAC, Urso denies each and every allegation  
2 contained therein.

3           50.     Answering paragraph 50 of the FAC, Urso denies each and every allegation  
4 contained therein.

5           51.     Answering paragraph 51 of the FAC, Urso denies each and every allegation  
6 contained therein.

7           52.     Answering paragraph 52 of the FAC, Urso denies each and every allegation  
8 contained therein.

9           53.     Answering paragraph 53 of the FAC, Urso denies each and every allegation  
10 contained therein. Without limiting the generality of the foregoing, Urso denies that any of the  
11 plaintiffs are entitled to any remedy or sum from Urso and further denies that any of the plaintiffs  
12 have tendered or have the ability to tender securities as alleged in that paragraph.

13          54.     Answering paragraph 54 of the FAC, Urso denies each and every allegation  
14 contained therein.

15          55.     Answering paragraph 55 of the FAC, Urso denies each and every allegation  
16 contained therein.

17          56.     Answering paragraph 56 of the FAC, Urso denies each and every allegation  
18 contained therein.

19          57.     Answering paragraph 57 of the FAC, Urso incorporates by this reference, as if fully  
20 set herein, the responses contained in paragraphs 1 through 56 above.

21          58.     Answering paragraph 58 of the FAC, Urso denies each and every allegation  
22 contained therein.

23          59.     Answering paragraph 59 of the FAC, Urso denies each and every allegation  
24 contained therein.

25          60.     Answering paragraph 60 of the FAC, Urso denies each and every allegation  
26 contained therein. Without limiting the generality of the foregoing, Urso specifically denies that any  
27  
28

1 of the plaintiffs are entitled to any remedy or sum from Urso and further denies that any of the  
2 plaintiffs have tendered or are capable of tendering securities as alleged in that paragraph.

3 61. Answering paragraph 61 of the FAC, Urso denies each and every allegation  
4 contained therein. Without limiting the generality of the foregoing, Urso specifically denies that any  
5 of the plaintiffs have been damaged by Urso in any manner or amount whatsoever.

6 62. Answering paragraph 62 of the FAC, Urso denies each and every allegation  
7 contained therein.

8 63. Answering paragraph 63 of the FAC, Urso denies each and every allegation  
9 contained therein.

10 64. Answering paragraph 64 of the FAC, Urso denies each and every allegation  
11 contained therein.

12 65. Answering paragraph 65 of the FAC, Urso incorporates by this reference, as if fully  
13 set forth herein, the responses contained in paragraphs 1 through 64 above.

14 66. Answering paragraph 66 of the FAC, Urso denies each and every allegation  
15 contained therein.

16 67. Answering paragraph 67 of the FAC, Urso responds that the first three sentences of  
17 that paragraph merely contain purported legal conclusions and do not require a response. In  
18 addition, with respect to the second and third sentences of paragraph 67, Urso responds that the  
19 cited statutes speak for themselves. Urso further responds that the fifth sentence of paragraph 67  
20 merely purports to pray for certain relief and does not require a response. Except as expressly  
21 admitted and alleged herein, Urso denies each and every allegation contained in paragraph 67 of the  
22 FAC. Without limiting the generality of the foregoing, Urso specifically denies that any of the  
23 plaintiffs are entitled to any relief or remedy against Urso of any type or in any amount.

24 68. Answering paragraph 68 of the FAC, Urso denies each and every allegation  
25 contained therein.

26 69. Urso states that the Prayer for Relief contained in the FAC, including all of its  
27 subparagraphs, does not require a response.  
28

1           70.     Urso denies each and every allegation contained in the FAC not heretofore admitted  
2 or denied.

3           AS AND FOR HIS ADDITIONAL AND AFFIRMATIVE DEFENSES HEREIN, URSO  
4 ALLEGES AS FOLLOWS:

5                               **First Defense**

6                               **(Failure to State a Claim)**

7           71.     The FAC, including each and every purported claim for relief therein, fails to state  
8 facts sufficient to constitute a claim for relief against Urso.

9                               **Second Defense**

10                              **(ERISA Preemption - 29 U.S.C. §1001 et. seq.)**

11           72.     Each and every purported claim for relief set forth in the FAC is preempted by the  
12 Employee's Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1001 et. seq., including but  
13 not limited to Sections 1144(a), 1131(a)(1), 1131(a)(2) and 1131(a)(3).

14                              **Third Defense**

15                              **(Personal Jurisdiction)**

16           73.     At all times relevant to the determination of personal jurisdiction, Urso resided and  
17 was domiciled in the State of Texas, was not physically served with the Summons or FAC in  
18 California, had minimal, insubstantial, and non-continuous contacts with California, did not consent  
19 to the jurisdiction of a California court and is not subject to the jurisdiction of a California court for  
20 any purpose in this action.

21                              **Fourth Defense**

22                              **(Improper Venue)**

23           74.     At all times relevant to the determination of venue, none of the individual defendants  
24 named in this action resided in San Francisco County, none of the purported claims arose in San  
25 Francisco County and the convenience of the parties and witnesses, judicial economy, and the  
26 interest of justice make San Francisco County an improper venue pursuant to California Code of  
27 Civil Procedure §§ 395 and 395.5.



**Fifth Defense**

**(Inconvenient Forum)**

75. The Northern District of California is an inconvenient forum and transfer of this action to the Northern District of Texas or, alternatively, the Northern District of Illinois, is appropriate pursuant to 28 U.S.C. §1404.

**Sixth Defense**

**(Improper Service of Summons and FAC)**

76. Urso was not personally served with the summons and FAC and valid substitute service was not effected on Urso in that, among other things, Plaintiffs attempted to serve Urso by leaving a copy of the Summons and FAC at Urso's residence with a minor under 18 years of age in violation of California Code of Civil Procedure § 415.20 (b), failed to complete service by mailing a copy of the Summons and FAC to the same address, and failed to indicate on the Summons the capacity in which they purported to serve Urso.

**Seventh Defense**

**(Improperly Named Plaintiff)**

77. Plaintiff Medhi Zahari is improperly named as a Plaintiff in "Attachment B" to the Summons but is not named as a Plaintiff on the caption page of the FAC.

**Eighth Defense**

**(Lack of Standing- California Corporations Code §§ 25400 and 25500)**

78. With respect to the first claim for relief set forth in the FAC, Plaintiffs lack standing in that, among other things, the stock that is the subject of Plaintiffs' purported claims is held and was purchased by a trustee of an employee benefit plan and, consequently, Plaintiffs are not purchasers or sellers of stock within the meaning of California Corporations Code §§25400 or 25500.



**Ninth Defense**

**(Lack of Standing – All Causes of Action)**

79. With respect to each and every purported claim for relief set forth in the FAC, Plaintiffs lack standing to assert such claims in that, among other things, the stock that is the subject of Plaintiffs' purported claims is held by a trustee of an employee benefit plan, and the Plaintiffs have no direct ownership interest in the stock.

**Tenth Defense**

**(Improper Defendant - California Corporations Code §§ 25400 and 25500)**

80. With respect to the first claim for relief set forth in the FAC, Defendant Urso is an improper defendant because Urso is not a purchaser or seller of stock within the meaning of California Corporations Code §§25400 or 25500.

**Eleventh Defense**

**(Statute of Limitations- California Corporations Code § 25400 et. seq.  
and Civil Conspiracy)**

81. The first and third claims for relief set forth in the FAC are barred, in whole or in part, by the statute of limitations provided in California Corporations Code § 25506.

**Twelfth Defense**

**(Statute of Limitations-Fraud, Deceit and Civil Conspiracy)**

82. The second and third claims for relief set forth in the FAC are barred, in whole or in part, by the statute of limitations provided in California Code of Civil Procedure § 338(d).

**Thirteenth Defense**

**(Statute of Limitations-California Business and Professions Code § 17200 et. seq.  
and Civil Conspiracy)**

83. The third and fourth claims for relief set forth in the FAC are barred, in whole or in part, by the statute of limitations provided in California Business and Professions Code §17208.

**Fourteenth Defense**

**(Lack of Causation)**

84. With respect to each and every purported claim for relief set forth in the FAC, Urso is informed and believes, and on that basis alleges, that any cognizable damage or injury alleged in the FAC was not proximately caused in whole or in part by any act or omission of Urso.

**Fifteenth Defense**

**(Failure to Mitigate Damages)**

85. With respect to each and every purported claim for relief set forth in the FAC, Urso denies that Plaintiffs have suffered any cognizable damage or injury as a result of any act or omission of Urso, but alleges, in the alternative, that if the Court should determine that Plaintiffs have suffered cognizable injury or damage as a result of any act or omission of Urso, Plaintiffs have failed to use reasonable efforts to mitigate such damage or injury.

**Sixteenth Defense**

**(Good Faith)**

86. Urso at all times acted in good faith and on an informed basis.

**Seventeenth Defense**

**(California Business and Professions Code Section 17200**

**Does Not Apply to Securities Transactions)**

87. The fourth claim for relief set forth in the FAC is barred, in whole or in part, in that, among other things, the allegations that form the basis for the fourth claim for relief purport to involve securities transactions and, as a matter of law, California Business and Professions Code §17200 does not impose liability for violations related to securities transactions.

**Eighteenth Defense**

**(California Business and Professions Code Section 17200-**

**Failure to Meet Class Action Requirements)**

88. The fourth claim for relief set forth in the FAC is barred, in whole or in part, in that, among other things, although Plaintiffs seek relief on behalf of themselves and other similarly

1 situated individuals, class action requirements have not been pleaded and cannot be satisfied, as  
 2 required by California Business and Professions Code §§ 1703 and 17204.

### 3 **Nineteenth Defense**

#### 4 **(Settlement, Release, Discharge)**

5 89. With respect to Plaintiff Gary Griffin ("Griffin"), each and every purported claim set  
 6 forth in the FAC is barred because Griffin released Urso from such claims in a written Settlement  
 7 Agreement in August of 2003. The Griffin Settlement Agreement is incorporated by this reference  
 8 as if fully set forth herein.<sup>3</sup>

### 9 **Twentieth Defense**

#### 10 **(Settlement, Release, Discharge)**

11 90. With respect to Plaintiff Ann C. Thompson ("Thompson"), each and every purported  
 12 claim for relief set forth in the FAC is barred because Thompson released Urso from such claims in  
 13 a Settlement Agreement and General Release of Claims effective December 13, 2001. The  
 14 Thomspson Settlement Agreement is incorporated by this reference as if fully set forth herein.

### 15 **Twenty First Defense**

#### 16 **(Settlement, Release, Discharge)**

17 91. With respect to Plaintiff Brian Gotta ("Gotta") each and every purported claim for  
 18 relief set forth in the FAC is barred because Gotta released Urso from such claims in a Severance  
 19 Agreement dated August 7, 2002. The Gotta Severance Agreement is incorporated by this reference  
 20 as if fully set forth herein.

### 21 **Twenty Second Defense**

#### 22 **(Settlement, Release, Discharge)**

23 92. With respect to Medhi Zahari ("Zahari"), who is listed on the Summons as a  
 24 Plaintiff, but not on the FAC, if he purports to be a Plaintiff, each and every purported claim for  
 25 relief set forth in the FAC is barred because Zahari released Urso from such claims in a written

26 <sup>3</sup> The releases referenced in defenses, Nineteen, Twenty, Twenty One, Twenty Two and Thirty Two  
 27 are confidential and will be made available to Plaintiffs' counsel pursuant to an appropriate  
 28 protective order or other suitable protections.

1 Settlement Agreement and General Release and a Cash Out Offer which Zahari accepted, both dated  
2 December 6, 2004. The Zahari Settlement Agreement and Cash Out are incorporated by this  
3 reference as if fully set forth herein.

4 **Twenty Third Defense**

5 **(Lack of Reliance)**

6 93. With respect to each and every purported claim set forth in the FAC, Urso alleges  
7 that Plaintiffs did not justifiably or reasonably rely on any of the purported misrepresentations or  
8 omissions alleged therein. Urso further alleges that some, or in the case of certain Plaintiffs all, of  
9 the Lux stock held by the Lux Plan for the benefit of such Plaintiffs was contributed to the Plan as  
10 voluntary employer contributions. Plaintiffs had no discretion over such contributions.  
11 Accordingly, Plaintiffs took no action in reliance on any statement or omission with respect to such  
12 stock.

13  
14 **Twenty Fourth Defense**

15 **(Unclean Hands)**

16 94. Each and every purported claim for relief set forth in the FAC is barred, in whole or  
17 in part, and/or the damages recoverable thereunder are reduced, by the doctrine of unclean hands.

18 **Twenty Fifth Defense**

19 **(Laches)**

20 95. Each and every purported claim for relief set forth in the FAC is barred, in whole or  
21 in part, and/or the damages reduced, by the doctrine of laches.

22 **Twenty Sixth Defense**

23 **(Estoppel)**

24 96. Each and every purported claim for relief set forth in the FAC is barred, in whole or  
25 in part, and/or the damages reduced, by the doctrine of estoppel.

**Twenty Seventh Defense**

**(Waiver)**

97. Each and every purported claim for relief set forth in the FAC is barred, in whole or in part, and/or the damages reduced, by the doctrine of waiver.

**Twenty Eighth Defense**

**(Assumption of Risk)**

98. Each and every purported claim for relief set forth in the FAC is barred in whole or in part, and/or the damages reduced, because Plaintiffs voluntarily assumed the risk that any investment in Lux stock could result in a loss.

**Twenty Ninth Defense**

**(Contributory Negligence)**

99. Each and every purported claim for relief set forth in the FAC is barred in whole or in part, and/or the damages reduced, by Plaintiffs' own negligence in failing to exercise reasonable care, or by disregarding their actual knowledge of any alleged misrepresentations or omissions attributed to Urso.

**Thirtieth Defense**

**(Comparative Fault)**

100. Each and every purported claim for relief set forth in the FAC is barred in whole or in part, and/or the damages reduced or eliminated, in proportion to the wrongful or negligent conduct of persons and/or entities other than Urso (including but not limited to Plaintiffs and all other Defendants) under principles of equitable allocation, recoupment, indemnity and comparative fault.

**Thirty First Defense**

**(Consent)**

101. Each and every purported claim for relief set forth in the FAC is barred, in whole or in part, and/or the damages reduced by the doctrine of waiver.

**Thirty Second Defense****(Unjust Enrichment)**

102. Each and every purported cause of action set forth in the FAC is barred, in whole or in part, with respect to Plaintiffs Griffin, Thompson, Gotta and Zahari because these Plaintiffs entered into agreements releasing Urso from claims such as the ones asserted in the FAC and these Plaintiffs would be unjustly enriched if allowed to recover under the FAC.

**Thirty Third Defense****(Settlement, Release, Discharge)**

103. With respect to Plaintiff Eleanor M. McCarthy ("McCarthy"), each and every purported claim for relief set forth in the FAC is barred because McCarthy released Urso from such claims in a written Cash Out Offer which McCarthy accepted on or about June 9, 2004. The Cash Out accepted by McCarthy is incorporated by this reference as if fully set forth herein.

Dated: April 27, 2005

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